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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - NORTHERN DIVISION

In re:

HVI CAT CANYON, INC.,

Debtor.

Case No. 9:19-bk-11573-MB

Chapter 11

**EVIDENTIARY OBJECTIONS TO
DECLARATIONS IN LIEU OF
AFFIDAVIT OF RANDEEP GREWAL
AND ERNESTO OLIVARES IN
OPPOSITION TO MOTION IN LIMINE
[DKT. 302-1, 302-2]**

Hearing

Date: October 3, 2019

Time: 10:00 a.m.

Place: Courtroom 201

1415 State Street

Santa Barbara, California

UBS AG, London Branch ("UBS") submits the following evidentiary objections to the
Declaration In Lieu Of Affidavit of Mr. Randeep Grewal and the *Declaration In Lieu Of Affidavit*

1 of Mr. Ernesto Olivares attached to the Debtor's *Opposition To Motion In Limine* filed on
2 September 27, 2019. See Docket Nos. 302 (Opposition to Motion In Limine); 302-1 (Grewal
3 Declaration); 302-2 (Olivares Declaration). Both Declarations should be stricken in their entirety.

4 Judge Wiles has already ruled that the 2016 Reserve Report—in the absence of any
5 testimony from its creator, Netherland, Sewell & Associates, Inc. (“NSAI”)—is inadmissible
6 hearsay. See Docket No. 83 (Motion in Limine) at 3-4. At the first day hearing, the Court
7 explained at length that the Debtor simply cannot rely on the 2016 Reserve Report “without
8 something to validate what [it is] and how [it] was prepared and testimony by the author ... that
9 it actually was prepared and is valid and states an honest opinion that still exists.” *Id.* at 6;
10 Hr’g Tr. at 45:19-46:7 (emphasis added). Nothing in the Grewal Declaration or Olivares
11 Declaration supplies any such foundation, and no such foundation exists. Indeed, during the first
12 day hearing, this is what the Debtor’s lead counsel said to Mr. Grewal: “I mean, I’m not calling
13 you as a petroleum expert, but I’m calling you as an entrepreneur and as an owner and as an
14 operator in this particular debtor case.” Hr’g Tr. at 44:8–11. The Court then emphasized the
15 point by stating that “you haven’t qualified [Mr. Grewal] as an expert, you’ve asked him based on
16 different grounds, so I don’t know how he can testify as to a value based on a hearsay report.” *Id.*
17 at 45:22–25. The Reserve Report was hearsay then, and it is hearsay now.

18 In their Declarations, Mr. Grewal and Mr. Olivares attempt to evade Judge Wiles’s
19 evidentiary ruling by belatedly characterizing the 2016 Reserve Report as a “business record” of
20 the Debtor under the Federal Rules of Evidence. This attempt utterly fails. The Declarations do
21 not (and cannot) lay any foundation for their assertion that “NSAI ... is familiar knowledgeable
22 [sic] of the type of assets evaluated” in the Reserve Report. Grewal Declaration at ¶ 4; FRE
23 803(6)(A).¹ There is no testimony in either Declaration that the creation of the 2016 Reserve
24

25 _____
26 ¹ Federal Rule of Evidence 803 provides, in relevant part, as follows:

27 The following are not excluded by the rule against hearsay [...]:

28 (6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with
knowledge;

1 Report was a “regular practice” of the Debtor. FRE 803(6)(C). On its face, nothing seems
2 regular about the creation of a supposedly annual report that was last created three years ago.
3 Moreover, neither Mr. Grewal nor Mr. Olivares asserts that he is the custodian of the Debtor’s
4 records. FRE 803(6)(D).

5 The Declarations are also untimely. They violate Judge Wiles’s initial scheduling order—
6 which required all evidence to be submitted with the relevant pleading (foundation certainly being
7 part of evidence)—and this Court’s September 24, 2019 *Scheduling Order Following Chapter 11*
8 *Status Conference* entered [Docket No. 251] (the “Scheduling Order”). The Scheduling Order set
9 forth in painstaking detail what additional papers were permitted to be filed before the cash
10 collateral hearing on October 3, 2019. This Court permitted parties to submit evidentiary
11 objections “in connection with the Cash Collateral Motion, the Surcharge Motion, [and] the
12 Motion in Limine” no later than September 27, 2019. See Scheduling Order at ¶ 1(e). The Court
13 did not permit the Debtor to file reply argument or purported new evidence or testimony in
14 opposition to the Motion in Limine. Finally, the Declarations violate LBR 9013-1(i)(2), which
15 does not permit a party to respond to an evidentiary objection by belatedly offering the foundation
16 that should already have been laid. Id.

17 To be clear, the testimony in the Declarations consists entirely of incompetent lay opinion,
18 speculation, and conclusory legal argument that is inadmissible under the Federal Rules of
19 Evidence:

- 20
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-
- 24 (B) the record was kept in the course of a regularly conducted activity of a business, organization,
25 occupation, or calling, whether or not for profit;
26 (C) making the record was a regular practice of that activity;
27 (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by
28 a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
(E) neither the opponent does not show that the source of information nor or the method or
circumstances of preparation indicate a lack of trustworthiness.

See FRE 803(6) (emphasis added).

OBJECTIONS TO RANDEEP GREWAL'S DECLARATION IN LIEU OF AFFIDAVIT

No.	Objectable Testimony	Grounds for Objection	Sustained / Overruled
1.	¶ 3. "The Report was maintained in the ordinary course of business. Further, the Report was drafted by NSAI, which is familiar knowledgeable of the type of assets evaluated therein, in 2016."	<p><u>Objections:</u> lack of foundation (FRE 602), inadmissible opinion, conclusory (FRE 701), speculative (FRE 602), misleading (FRE 403).</p> <p>Mr. Grewal does not (and cannot) lay any foundation for his assertion that NSAI is familiar with the assets described in the 2016 Reserve Report. His conclusory assertion is based on speculation and uninformed opinion. Mr. Grewal is not qualified to speak on behalf of NSAI.</p> <p>Mr. Grewal also provides no foundation or factual support for his statement that the Report was "maintained in the ordinary course of business." Notably, the Debtor does not appear to have commissioned any Reserve Report other than the 2016 Reserve Report.</p>	<p>SUSTAINED</p> <p>_____</p> <p>OVERRULED</p> <p>_____</p>

OBJECTIONS TO ERNESTO OLIVARES'S DECLARATION IN LIEU OF AFFIDAVIT

No.	Objectable Testimony	Grounds for Objection	Sustained / Overruled
2.	¶ 3. "The Report was maintained in the ordinary course of business. Further, the Report was drafted by NSAI, which is familiar knowledgeable of the type of assets evaluated therein, in 2016."	<p><u>Objections:</u> lack of foundation (FRE 602), inadmissible opinion, conclusory (FRE 701), speculative (FRE 602), misleading (FRE 403).</p> <p>Mr. Olivares does not (and cannot) lay any foundation for his assertion that NSAI is familiar with the assets described in the 2016 Reserve Report. His conclusory assertion is based on speculation and uninformed opinion. Mr. Olivares is not qualified to speak on behalf of NSAI.</p> <p>Mr. Olivares also provides no foundation or factual support for his statement that the Report was "maintained in the ordinary course of business." Notably, the Debtor does not appear to have commissioned any Reserve Report other than the 2016 Reserve Report.</p>	<p>SUSTAINED</p> <p>_____</p> <p>OVERRULED</p> <p>_____</p>

Dated: October 1, 2019

Respectfully submitted,

O'MELVENY & MYERS LLP

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PROOF OF SERVICE OF DOCUMENT

I am over the age of eighteen and not a party to this bankruptcy case or adversary proceeding. My business address is **400 South Hope Street, Los Angeles, California 90071-2899**.

A true and correct copy of the foregoing document entitled **EVIDENTIARY OBJECTIONS TO DECLARATIONS IN LIEU OF AFFIDAVIT OF RANDEEP GREWAL AND ERNESTO OLIVARES IN OPPOSITION TO MOTION IN LIMINE [DKT. 302-1, 302-2]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”):

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be served by the court via NEF and hyperlink to the document. On **10/1/2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

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II. SERVED BY OVERNIGHT FEDEX: On 10/1/2019, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

DEBTOR:

HVI Cat Canyon, Inc.
c/o Capitol Corporate Services, Inc.
36 S. 18th Avenue Suite D
Brighton, CO 80601

ATTORNEYS FOR DEBTOR:

Weltman & Moskowitz, LLP
Attn: Michael L. Moskowitz
270 Madison Ave., Ste. 1400
New York, NY 10016-0601

III. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 10/1/2019 I served the following person(s) and/or entity(ies) by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

JUDGE:

Hon. Martin R. Barash
United States Bankruptcy Court
Central District of California
21041 Burbank Boulevard, Suite 342 / Courtroom 303
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of October, 2019, at Los Angeles, California.

/s/ Jan Wallis
Jan Wallis